

In the Triggiani case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court***, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Matscher,
Mr L.-E. Pettiti,
Sir Vincent Evans,
Mr C. Russo,
Mr J. De Meyer,
Mr N. Valticos,
Mr A.N. Loizou,
Mr J.M. Morenilla,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 2 October 1990 and 24 January 1991,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

* The case is numbered 17/1990/208/268. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Protocol No. 8, which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

PROCEDURE

1. The case was referred to the Court on 16 February 1990 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13509/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Emanuele Triggiani, on 19 November 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) art. and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). On 29 March 1990 the President of the Court granted him leave to use the Italian language (Rule 27 § 3).

3. On 21 February 1990 the President decided that, pursuant to Rule 21 § 6 and in the interests of the proper administration of justice, this case and the cases of Motta, Manzoni, Pugliese (I), Alimena, Frau, Ficara, Viezzer, Angelucci, Maj, Girolami, Ferraro, Mori, Colacioppo and Adiletta and Others* should be heard by the same Chamber.

* Cases of Motta (4/1990/195/255), Manzoni (7/1990/198/258), Pugliese(I) (8/1990/199/259), Alimena (9/1990/200/260), Frau (10/1990/201/261), Ficara (11/1990/202/262), Viezzer (12/1990/203/263), Angelucci (13/1990/204/264), Maj (14/1990/205/265), Girolami (15/1990/206/266), Ferraro (16/1990/207/267), Mori (18/1990/209/269), Colacioppo (19/1990/210/270), Adiletta and Others (20/1990/211/271-273)

4. The Chamber to be constituted for this purpose included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 26 March 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr L.-E. Pettiti, Sir Vincent Evans, Mr J. De Meyer, Mr N. Valticos, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the need for a written procedure (Rule 37 § 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 17 July 1990 and the Government's memorial on 31 July. By a letter received on 31 August, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 29 August 1990 that the oral proceedings should open on 1 October 1990 (Rule 38).

7. On 31 August 1990 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, seconded to
the Diplomatic Legal Service of the
Ministry of Foreign Affairs, Co-Agent;

(b) for the Commission

Mr S. Trechsel, Delegate;

(c) for the applicant

Mr T. Castagnino, avvocato, Counsel.

The Court heard addresses by the above-mentioned representatives, as well as their answers to its questions.

On 25 October the registry received the Government's observations on the applicant's claims for just satisfaction.

AS TO THE FACTS

9. Mr Emanuele Triggiani, an Italian national, resides in Rome. When the criminal proceedings were instituted against him, he was a bank employee. The facts established by the Commission pursuant to Article 31 § 1 (art. 31-1) of the Convention are as follows (paragraphs 12-23 of its report, see paragraph 12 below):

"12. The applicant was arrested on 18 August 1975, under an arrest warrant dated 14 August 1975, issued by the Rome investigating judge, on charges of fraud, forgery and use of forged documents, and criminal association.

13. The applicant, a bank employee, was charged with having obtained a number of chequebooks on the account of a client of the bank in which he worked, and of passing them on to accomplices who had forged the client's signature and thus been able to pay very large sums of money into accounts opened under a false name.

The charges brought against the applicant were based on a police report drawn up following the inquiry made as a result of the complaint lodged by the account-holder. This report was forwarded to the Rome public prosecutor's office on 8 March 1975.

14. After his arrest, the applicant was examined on two occasions by the Rome investigating judge, on 19 August and 18 October 1975. No other investigation procedure was carried out as regards the applicant. However, as the case involved several other defendants, the file records a number of procedures concerning the legal position of these persons.

15. The applicant was held in custody until the end of the maximum period for detention on remand. His release was ordered on 18 February 1976.

16. The applicant was committed for trial on 12 May 1978. On 14 July 1978 the Rome District Court summoned him to appear on 22 January 1979. The trial, which involved twelve defendants, lasted from 22 January 1979 to 30 September 1981. Fourteen hearings had to be scheduled (22 January 1979, 26 March 1979, 9 April 1979, 30 June 1979, 24 November 1979, 13 February 1980, 7 May 1980, 9 July 1980, 26 November 1980, 25 March 1981, 3 June 1981, 17 June 1981, 3 July 1981, 30 September 1981). However, not all of these hearings were given over to examination of the case: seven hearings were adjourned for reasons connected with the internal organisation of the court. At the hearing on 9 April 1979 the court decided to postpone the hearing to 30 June 1979 with the parties' consent 'bearing in mind the need to deal with a number of other cases concerning defendants now in custody and to enable the parties to deal with the case properly ...'. On 30 June 1979 the parties requested that argument be taken without interruption. As this turned out to be impossible, the court adjourned the hearing to 24 November 1979 and requested that the registry set no further cases down for that day.

17. On 24 November 1979, the hearing could not take place as the composition of the court had changed. The same occurred

on 7 May 1980. On 9 July 1980 the court of its own motion postponed the hearing to 26 November 1980. On 25 March 1981, as priority had to be given to hearings involving defendants held in custody, the court postponed the hearing again; the hearing on 3 July 1981 was also postponed.

Two hearings were adjourned owing to protest action either by judges or by lawyers.

The hearing of 17 June 1981 was adjourned at the request of counsel for one of the accused.

18. In all, those hearings actually given over to examination of the case were the following: 22 January 1979, lasting 1 hour and 45 minutes; 26 March 1979, lasting 30 minutes; 3 June 1981, lasting 1 hour and 5 minutes; and lastly, 30 September 1981 which began at 3 p.m and ended at 9.30 p.m, after deliberations on the judgment in chambers.

19. On 30 September 1981 the applicant was acquitted for lack of evidence. The judgment was filed with the court registry on 11 November 1981.

20. The applicant appealed against the decision, believing that he should be totally cleared of suspicion.

On 3 September 1985 he was summoned to appear before the Rome Court of Appeal at a hearing on 21 October 1985. Only the last of five hearings successively fixed for consideration of the case (21 October 1985, 31 January 1986, 31 October 1986, 3 March 1987 and 28 October 1987) actually took place; the others had to be postponed for various reasons not attributable to the defendants.

21. By judgment of 28 October 1987, filed with the registry on an unspecified date, the Rome Court of Appeal declared the applicant not guilty of the offences with which he had been charged.

22. In the meantime the applicant, who had been suspended from his job on 12 September 1978, was dismissed in November 1978.

23. Moreover, the fact that it was impossible for him to provide for his family, and the suspicions surrounding him, allegedly drove his wife to seek a divorce. Separation was pronounced on 27 July 1977."

10. According to the information supplied to the European Court, the appeal court's judgment of 28 October 1987, which became final in relation to the applicant on 1 November 1987, was filed with the registry on 30 May 1988.

In addition, Mr Triggiani instituted proceedings contesting the validity of his dismissal. On 2 March 1979 the labour court stayed the proceedings under Article 3 of the Code of Criminal Procedure, because the decision depended on the outcome of the criminal proceedings brought against the applicant. It resumed examination of the case on 15 March 1988. The next hearing was scheduled to be held on 9 November 1990.

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 19 November 1987 to the Commission (no. 13509/88) Mr Triggiani complained of his arrest and the lack of an effective remedy (Article 5 §§ 1, 2 and 4 of the Convention) (art. 5-1, art. 5-2, art. 5-4). He also complained of the length

of the proceedings (Article 6 § 1) (art. 6-1).

12. On 5 September 1989 the Commission declared the application admissible as regards the last complaint. On 7 October 1988 it had declared it inadmissible for the rest. In its report of 5 December 1989 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 197-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

13. At the hearing on 1 October 1990 the Government confirmed the submission put forward in their memorial, in which they requested the Court to hold "that there has been no violation of the Convention in the present case".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

14. The applicant claimed that his case had not been examined within a "reasonable time" as required under Article 6 § 1 (art. 6-1) of the Convention, according to which:

"In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ... "

The Government disputed this view, whereas the Commission subscribed thereto.

15. The period to be taken into consideration began on 14 August 1975, the date on which the investigating judge ordered Mr Triggiani's arrest; it ended on 1 November 1987 (see paragraph 10 above).

16. The participants in the proceedings presented argument as to the way in which the various criteria employed by the Court in this context - such as the degree of complexity of the case, the conduct of the applicant and that of the competent authorities - should apply in the present case.

17. Article 6 § 1 (art. 6-1) of the Convention guarantees to everyone who is the object of criminal proceedings the right to a final decision within a reasonable time on the charge against him.

The Court points out that, under its case-law on the subject, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case. In this instance the circumstances call for an overall assessment (see, *mutatis mutandis*, the Obermeier judgment of 28 June 1990, Series A no. 179, p. 23, § 72).

The proceedings were undoubtedly of some complexity owing to the nature of the facts to be established, but the applicant did nothing to slow them down and there were lengthy periods involved in the investigation of the case (14 August 1975 to 12 May 1978), the trial at first instance (12 May 1978 to 30 September 1981) and the appeal proceedings (11 November 1981 to 21 October 1985), for

which no adequate explanation has been given by the Government. As pointed out by the Commission, and not refuted by the Government, most of the numerous postponements of the trial proceedings at first instance were due to reasons connected with the internal organisation of the Rome District Court. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of more than twelve years and two months.

There has therefore been a violation of Article 6 § 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

18. Under Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

19. Mr Triggiani claimed compensation of 150,000,000 Italian lire for the pecuniary and non-pecuniary damage which he had allegedly sustained as a result of the length of the proceedings.

20. In view of the length of time for which the applicant was unjustly deprived of his salary, and the non-pecuniary damage sustained by him, the Commission considered the amount sought to be reasonable.

The Government, on the other hand, regarded the applicant's claims as obviously excessive.

21. The Court accepts that Mr Triggiani clearly suffered pecuniary and non-pecuniary damage; it awards him 150,000,000 lire under this head.

B. Costs and expenses

22. The applicant sought the reimbursement of a total of 5,200,000 lire in respect of lawyer's fees and other expenses.

23. Having regard to the information available to it, the observations submitted and its case-law in this field, the Court awards him the full amount.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention;
2. Holds that the respondent State is to pay to Mr Triggiani 150,000,000 (one hundred and fifty million) Italian lire for pecuniary and non-pecuniary damage and 5,200,000 (five million two hundred thousand) lire for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar